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JUL 25 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
KUWABARA, ATSUSHI
Application No. 10/090,818
Filed: March 6, 2002
For: **ELECTROMAGNETIC SOUND
PRODUCING DEVICE**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is in response to the Petition to Withdraw the Holding of Abandonment pursuant to 37 CFR §1.181 filed July 14, 2005. No fee is required.

The application is held as abandoned for failure to timely respond to the non-final Office action mailed September 25, 2003. A Notice of Abandonment was mailed May 17, 2005.

Petitioner states that they did not receive the non-final Office action mailed September 25, 2003. In support thereof, petitioner provides a copy of their docket records and provides a statement that the file jacket and docket records were searched and that the non-final Office action was not received.

In the absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The petition complies with all of the requirements set forth above.

A review of the file record also reveals that the non-final Office action was returned to the Office as undeliverable on September 29, 2003.

Accordingly, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

Accompanying the petition is a response to the Office action originally mailed on September 25, 2003. Accordingly the file is being forwarded to the Technology Center's technical support staff for entry of the response. From there the file will be forwarded to the examiner for action in due course.



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